

القواعد والأصول الجامعة والفروق والتقسيم البديعة والنافعة
Al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah.

The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations

القاعدة -14 Foundation -14

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(d. 1376 A.H./1956 C.E.)
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Discussion based upon:

مبنية على شروح الشيخ عبد الرحمن بن ناصر السعدي
وشيخنا محمد بن صالح العثيمين (رحمهما الله)
وشيخنا د. سامي بن محمد الصقير (حفظه الله)

1-Sh. Ibn Sa'di's original explanation

2-Our Sh. Muhammad ibn Saalih Al-'Uthaimeen's Commentary, and

3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer
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Basic Rulings and Foundations of Fiqh-14

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions, and those who follow them until the Day of Resurrection. This is a continuation of the explanation of *The Basic Rulings and Principles of Fiqh – The Beneficial, Eloquent Classifications and Differentiations* by Imaam ‘Abd ar-Rahman bin Naasir as-Sa’di (رحمه الله : rahimahullaah).

Foundation fourteen is entitled:

"التلف في يد الأمين غير مضمون إذا لم يتعد، أو يفرط، وفي يد الظالم مضمون مطلقاً، أو يقال: ما ترتب على المأذون فهو غير مضمون، والعكس بالعكس"

There is no liability upon the bearer of trusts for destruction of something if there is no negligence or deliberate transgression on his part. In simpler terms, there is no liability for destruction when there is permission, and the opposite is true.

Difference between Transgression and Negligence

Negligence (*tafreet* - تفريط) entails abandoning that which should be preserved; transgression (*at-ta'adee* - التعدي) involves doing that which is forbidden from management, running of affairs, or usage. Both negligence and transgression are treated the same as wrongfully taking someone's rights.

Types of Bearers of Trusts

To understand this foundation, the three types of bearers of trusts must be known.

- 1) The possessing bearer is the individual that owns the article or utility. He has full control over its disposal or management. Therefore, the gain or the loss would be entirely upon him.
- 2) The trusted bearer is the person that receives the identified article by way of a permit from the Legislator, the possessor, or through the acceptance of the one that has legal authority over it. There is no liability upon him except in the case of negligence or transgression.

Examples:

- a) *al-Wadee* (الوديع) – Person with whom something is deposited so as to preserve it.
- b) *al-Wakeel* (الوكيل) – Commissioned agent that is authorized to dispose of a person's financial affairs during that individual's lifetime.

- c) *al-Ajeer* (الأجير) – Worker, laborer, employee, or hired one
 - d) *al-Murtahan* (المرتحن) – Receiver of the collateral put up as a security for a financial obligation to cover the amount if the debt proves impossible to repay.
 - e) *ash-Shareek* (الشريك) – Partner
 - f) *al-Mudarab* (المضارب) – Person that takes the property from its owner for the purpose of trafficking and trading therewith on the condition that the gain should be split between both of them or that the latter will have a certain share it.
 - g) *al-Wasee* (الوصي) – Trustee to execute, manage, or dispose of a person's affairs after his death.
 - h) *al-Wali* (الولي) – Guardian that is assigned by the Legislator over the property of the orphan, foolish, or insane.
 - i) *al-Multaqit* (الملتقط) – Finder of an article
 - j) *Naadhir al-waqf* (الناظر الوقف) – Appointed, responsible one over an endowment.
 - k) One assigned by a judge
 - l) Renter or tenant
 - m) Borrower – There are two opinions regarding him. Many of the people of knowledge have said that the borrower is liable in all cases. However, the more correct opinion is that he is not held liable unless he is negligent or transgresses.
- 3) The wrongful bearer is the individual that has the article fall under his hand without the permission of the owner or the Legislator. This person is liable for the article and its utility.

Examples:

- a) *al-Ghasib* (الغاصب) – Anyone that wrongfully takes something of value that is another person's right. This is illegal possession.
- b) A person unjustly took someone else's limousine by force for an entire month. After one month, the limousine was burned. The wrongful bearer is liable for both the car itself and the utility lost for that month. The owner of the limousine would estimate the money the car would make in a day and then multiplies that number by thirty days to determine the lost utility.

- c) Unfaithful trustee
- d) If an individual holds an object for someone else but later unjustifiably refuses to return it when asked, then he is liable and a wrongful bearer.
- e) A person found an object but failed to announce it. He is liable because he was negligent about an obligation. Moreover, some of the scholars are of the opinion that if he picks up an object so as to possess it and later intends to return it but it is destroyed in the meantime, then he is still liable because the obligation upon him was to give it to the authority in charge.
- f) An individual's property (e.g. clothes hanging out to dry) is carried by the wind into his neighbor's house. If the neighbor fails to inform the owner without an excuse, then he is liable.

Ruling on the Claim of Returning what is Entrusted

When the bearer of a trust claims that he returned what was entrusted, then the ruling differs depending upon the circumstances.

- 1) If the wrongful possessor claims he returned the article or object, then his statement is not accepted because his hand is not a trustworthy one.
- 2) Regarding the trusted possessor, there are three situations.
 - a) If the trusted bearer received the object for his own benefit, then his claim is not acceptable. An example of this situation would be a borrower.
 - b) If the trusted bearer received the article for the benefit of the possessor, then his statement of return is acceptable because he did not receive the object for his own benefit.
 - c) If the person received the article for both his benefit and the benefit of the owner, then his statement is not acceptable because in origin, there was no return. Since there are two conflicting benefits (i.e. the benefit of the bearer and that of the owner), both of these conflicting benefits fall, and all that remains is the origin, which is that there was no return. Examples for this situation are the tenant and the one receiving the collateral.

Conclusion

The fourteenth foundation in Imaam 'Abd ar-Rahman bin Naasir as-Sa'di's book, *al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah* (The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations), is entitled:

There is no liability upon the bearer of trusts for destruction of something if there is no negligence or deliberate transgression on his part. In simpler terms, there is no liability for destruction when there is permission, and the opposite is true.

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